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SENATE

{ REPORT
105-15

NATIONAL MISSILE DEFENSE ACT OF 1997

APRIL 30, 1997.—Ordered to be printed

Mr. THURMOND, from the Committee on Armed Services,
submitted the following

REPORT

together with

ADDITIONAL AND MINORITY VIEWS

[To accompany S. 7]

The Committee on Armed Services, to which was referred the bill (S. 7) having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE BILL

S. 7 would establish a policy for the development and deployment of a National Missile Defense (NMD) system. The National Missile Defense Act of 1997 would establish a requirement to deploy an NMD system by 2003 to defend all 50 states against limited ballistic missile threats. The Act provides broad guidance regarding the composition of the required NMD system, and allows the Secretary of Defense to select the specific components of the NMD architecture.

S. 7 urges the President to enter into negotiations with the Russian Federation to amend the ABM Treaty to allow for NMD deployments beyond those currently permitted under the Treaty. S. 7, however, does not require the deployment of systems that would violate the ABM Treaty or any other action that would violate the Treaty.

S. 7 uses the Department of Defense's "National Ballistic Missile Defense Capstone Requirements Document" to define the NMD system's requirements, from which cost estimates are derived. The Committee notes that, using these same requirements, the Director

of the Ballistic Missile Defense Organization last year estimated that a limited NMD system would cost roughly \$10 billion to develop and deploy (this estimate assumed a system consisting of 100 ground-based interceptors at a single site and a space-based sensor system known as the Space and Missile Tracking System).

SCOPE OF THE COMMITTEE REVIEW

The Armed Services Committee has closely followed the evolution of the NMD program and has led several efforts in the past to develop a legislative charter for NMD. In 1991, the committee took the initiative with the Missile Defense Act of 1991, which, among other things, established in law a goal for the United States to “deploy an anti-ballistic missile system, including one or an adequate additional number of anti-ballistic missile sites and space-based sensors, that is capable of providing a highly effective defense of the United States against limited attacks of ballistic missiles.” The Missile Defense Act of 1991 directed the Secretary of Defense to develop such a system for deployment “by the earliest date allowed by the availability of appropriate technology or by fiscal year 1996”.

During the 104th Congress, the committee considered several pieces of legislation related to NMD. The committee carefully considered the full range of associated issues during hearings and other committee meetings.

The committee has conducted numerous hearings on ballistic missile defense programs and policies, most recently on February 27, 1997, to receive testimony from the Director of the Ballistic Missile Defense Organization.

The committee is reporting S. 7 to the Senate for the following reasons:

Requirement for deploying an NMD system

As evidenced by its sponsorship of the Missile Defense Act of 1991, the committee has long maintained that there is a requirement to develop and deploy an NMD system as an urgent national priority. S. 7 is consistent with this long-standing position. Largely due to the current Administration’s opposition to a focused deployment effort, however, the bipartisan support for an NMD deployment that once existed on the committee has deteriorated. The Administration’s so-called “deployment readiness” or “three-plus-three” NMD program differs from the policy contained in S. 7, insofar as it would have the United States develop NMD technology but not commit to deployment until some unspecified time in the future. The majority view on the committee, which is represented by S. 7, is that the requirement for an NMD deployment decision is clear and compelling.

First, long-range ballistic missile threats face the United States today, if only from unauthorized or accidental launches from Russia or China. Moreover, threats are likely to emerge within the coming years from other countries, including, in particular, North Korea, which currently has an intercontinental ballistic missile (ICBM) under development. Perhaps most troubling, any country that might develop or acquire a capability to deploy a satellite in low earth orbit could also deliver a nuclear warhead at intercontinental distances. The technologies and knowledge necessary to de-

velop such systems are widely available. Hence, although it is difficult to predict the emergence of new threats, the capabilities exist for several countries to acquire such capabilities in the near future.

Second, the lack of a U.S. NMD system may actually invite proliferation and the development or acquisition of long-range ballistic missiles by rogue states. Deploying an NMD system prior to the unambiguous emergence of new missile threats to the United States might serve to deter countries that would otherwise seek to acquire ICBMs. A vulnerable America presents a range of opportunities and incentives for missile proliferation, blackmail, and even aggression.

Third, deployment of an NMD system can help pave the way for a more reliable and less adversarial form of strategic stability. Mutual vulnerability is clearly not a necessary basis for a stable deterrence relationship. Indefinitely extending Cold War notions of nuclear deterrence based on vulnerability and threats of retaliation is likely to perpetuate basic animosities and security concerns, and prohibit the development of the more positive relations necessary for a genuinely stable U.S.-Russian strategic relationship. Arms reductions alone cannot accomplish this goal. By easing concerns about possible non-compliance and third party ballistic missile threats, national missile defenses can help provide the confidence necessary to move toward deeper offensive reductions.

NMD deployment policy

Although there are a number of controversial issues associated with NMD policy, none has generated as much debate in recent years as the requirement to deploy an NMD system by a date certain. The Administration's opposition to S. 7 is primarily based on its opposition to establishing a deployment policy at the current time. The committee, however, has long favored an NMD approach in which a target date for deployment is specified in law. As cited above, in 1991, the committee endorsed a goal of 1996 for initial operational capability of a limited NMD system as part of the Missile Defense Act of 1991. During the committee's markup of the Defense Authorization Bill for Fiscal Years 1992 and 1993, the committee adopted the Missile Defense Act of 1991 by a vote of 16 to 4. During the Senate's consideration of the FY92-93 Defense Authorization Bill, an amendment to strike the 1996 IOC date from the Missile Defense Act of 1991 was defeated by the Senate on a roll call vote of 64 to 34. During the debate on that amendment, the Chairman of the committee, Senator Nunn, stated clearly the rationale for setting a specific deployment date:

In 1961, it was important that President Kennedy declared the goal of landing a man on the moon. But he did not just say people of America, "I hope one day we will land a man on the moon." He set a date. He was not absolutely certain we were going to meet that date. He could not tell whether every rocket was going to be built on time or whether all the programs were going to work. He hoped it would. But having that date made an enormous amount of difference in the whole program, and of course it turned out the date was met.

Without having a date, without having a timeframe, it is very unlikely we would have ever gotten to the moon by 1970. We have set a target date in this goal, in the architecture we have set forth here, of 1996, as the Senator observed. That does not guarantee we can meet that timeframe.

But it is important we have an initial operational capability goal.

The majority on the committee continue to agree with the former Chairman of the committee, Senator Nunn, and believe that it is important to specify an initial operational capability date for an NMD system in order to provide focus and establish a sense of priority and urgency. The Department of Defense has continued to underfund the NMD program and has failed to establish the organizational arrangements that would get the NMD program moving in the right direction at the right speed. It is difficult to avoid the conclusion that the Administration does not even take its own "three-plus-three" program seriously. Indeed, the Director of the Ballistic Missile Defense Organization has testified that the NMD program is "extremely high risk," largely due to insufficient funding in the budget for robust testing and other risk reduction measures.

The majority does not accept the argument that providing a legislative mandate to deploy by a date certain will force DOD to prematurely lock the United States into a technological solution. The policy specified in S. 7 would not freeze NMD technology options any more than the administration's "three-plus-three" NMD program, which is also supposed to preserve the option of deployment by 2003. DOD routinely deploys systems even though the necessary technologies and components continue to evolve. To do otherwise would mean never deploying at all. In the area of theater missile defense, the DOD has embraced a concept known as "user operational evaluation system" or UOES to permit fielding of initial capability without hindering the evolution of technology or getting into a self-perpetuating cycle of waiting for the "perfect" solution. With regard to NMD, the U.S. is already pursuing a clear development path, but with insufficient vigor. Establishing a deployment policy would provide necessary focus but would not undermine programmatic flexibility or technology options.

The committee also rejects the argument that a deployment decision would force deployment of a system even if it is technologically deficient. There are numerous laws and regulations to ensure that the United States does not deploy a system that is not ready for deployment. Without a deployment policy, however, the chances of attaining a state of readiness which would permit deployment are decreased.

The committee believes that the technology needed to deploy an NMD system by 2003 is within reach. The fundamental technologies are well understood and virtually in hand. There remains, however, a significant engineering and systems integration challenge. A robust testing program will be necessary to meet the stated date, but this is a matter of relative resource allocation priorities rather than basic science.

Arms control considerations

The committee does not review NMD deployments as inconsistent with arms control agreements or the maintenance of strategic stability. The United States has seen fit to update our offensive posture and associated arms control agreements repeatedly since 1972 when the first Strategic Arms Limitations Talks occurred. During that same time, only one defensive arms control agreement has been reached. The committee believes that the United States should pursue, with an appropriate sense of priority, ways to update our strategic defensive posture and associated arms control agreements to allow for expanded defensive deployments.

The majority rejects the argument that deployment of an NMD system will undermine offensive arms control or stability. Russia has maintained an operational ABM system for many years and the United States has not viewed it as a threat to deterrence or arms control. During the early 1990s, the Russians themselves made clear that they did not view expanded deployments of national missile defenses as a threat to arms control or deterrence. President Yeltsin even proposed that the United States and Russia cooperate in the development of a global defense system. Rather than exploring these innovative proposals, the current administration, in 1993, opted to terminate the ongoing negotiations that were intended to find ways to allow for expanded NMD deployments. As long as the Administration maintains that NMD is destabilizing and a threat to arms control, the Russians will have no incentive to explore ways to update the ABM Treaty.

Nothing in S. 7 requires the United States to undertake any action that would violate the ABM Treaty. At the same time, S. 7 does encourage the President to enter into negotiations with the Russian Federation to amend the ABM Treaty to allow for NMD deployments that exceed current treaty limitations. The committee notes that many of the concepts that the Administration is exploring also require such amendments.

Summary

S. 7 provides a careful balance between competing interests regarding NMD policy. It embodies many compromises that have been developed over the last several years to deal with concerns regarding cost, arms control, and the role of the Executive Branch. The committee recommends passage of this legislation.

DEPARTMENTAL RECOMMENDATIONS

By letter dated April 23, 1997, the General Counsel of the Department of Defense provided the committee with the Administration's position on S. 7. The General Counsel's letter is shown below.

GENERAL COUNSEL OF THE
DEPARTMENT OF DEFENSE,
Washington, DC, April 23, 1997.

Hon. STROM THURMOND,
*Chairman, Committee on Armed Services,
U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Defense on S. 7, 105th Congress, a bill "To establish a United States policy for a national missile defense system, and for other purposes."

The Department of Defense objects to this legislation because it would commit the United States to a deployment decision today of a national missile defense (NMD) system. We consider that a better use of defense dollars is our current plan—to develop a system over the next three years, and deploy it (or an improved variant) when and if a threat emerges. If we do otherwise, it will divert resources that our military needs for other priorities, and result in a less effective defense when and if a threat does emerge. The Department has the correct and prudent overall ballistic missile defense program: one that positions us to deploy a defense of the United States when a threat emerges and that gives priority to deploying theater missile defenses against a threat that is here and now.

The Department agrees with the bill's premise that the United States must be prepared to defend against potential rogue missile threats. Furthermore, the Department's "3-plus-3" Deployment Readiness Program positions us to deploy a national missile defense by 2003, just as S. 7 would. Our program develops national missile defense technology for three years—the minimum time needed to develop a workable defense—after which the United States can make a decision to deploy a system by 2003 if warranted by the threat. The crucial difference is the timing of the deployment decision. Mandating an NMD deployment decision now would divert vital defense funds from other more pressing needs, including Service modernization requirements that the Chairman and the other members of the Joint Chiefs of Staff have highlighted as priorities to meet today's threats.

If we determine that deployment of an NMD system requires modifications to the ABM Treaty, it is our intention to engage Russia and seek agreement on them. However, by mandating deployment and a one-year deadline in which to achieve negotiated changes to the ABM Treaty, S. 7 could be interpreted by the Russians as putting the United States on a path toward abrogating the ABM Treaty, thus putting at risk continued Russian implementation of the START I Treaty and Russian ratification of START II. These two treaties together will reduce the number of U.S. and Russian strategic nuclear warheads by two-thirds from Cold War levels, significantly lowering the threat to U.S. national security. It would be imprudent to jeopardize these reductions by making a decision today to deploy an NMD system when not warranted by the threat.

The Intelligence Community has concluded that a long-range ballistic missile threat to the United States from a rogue nation is unlikely to emerge within the next 14 years, but could be accelerated if those nations acquired this capability from beyond their borders.

However, the Department is not complacent about this assessment. That is why the NMD program the Department is pursuing is designed to field as early as 2003—well ahead of the intelligence community estimates—a system able to deal with such threats. By mandating an NMD deployment decision now, the bill would force the Department to commit prematurely to a technological option that may be outdated when the threat emerges.

Finally, the Department notes that it currently is considering our ballistic missile defense program in the Quadrennial Defense Review. It is possible that the results of the review could change in some manner our approach to National Missile Defense. We will promptly notify you if there are any changes to the foregoing positions.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this report for the consideration of the committee.

Sincerely,

JUDITH A. MILLER.

COMMITTEE ACTION

In accordance with the Legislative Reorganization Act of 1946, as amended by the Legislative Reorganization Act of 1970, there is set forth below the committee vote to report the National Missile Defense Act of 1997 (S. 7).

In favor: Senators Thurmond, Warner, McCain, Coats, Smith, Kempthorne, Inhofe, Santorum, Snowe, and Roberts.

Opposed: Senators Levin, Kennedy, Bingaman, Glenn, Byrd, Robb, Lieberman, and Cleland.

The other roll call votes on amendments to the bill which were considered during the course of the mark-up have been made public and are available at the committee.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

By letter dated April 24, 1997, the Congressional Budget Office stated that it cannot provide a cost estimate for S. 7 because that estimate would have to be classified. The letter from the Congressional Budget Office is shown below.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 24, 1997.

Hon. STROM THURMOND,
Chairman, Committee on Armed Services,
U.S. Senate, Washington, DC

DEAR MR. CHAIRMAN: The Congressional Budget Office cannot provide a cost estimate for S. 7, the National Missile Defense Act of 1997, as ordered reported by the Senate Committee on Armed Services on April 24, 1997, because that estimate would have to be classified. Section 7 of the bill would define a limited ballistic missile attack by reference to a classified document issued by the United States Space Command. A CBO cost estimate would likely provide enough information to reveal how that document defines such an attack, a definition that we must presume is classified. Prepar-

ing a classified estimate would be inconsistent with CBO's procedures for the review and distribution of its products.

If you have any questions on this matter, we will be pleased to answer them. The CBO staff contact is Michael A. Miller.

Sincerely,

JUNE E. O'NEILL, *Director*.

REGULATORY IMPACT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires that a report on the regulatory impact of a bill be included in the report on the bill. The committee finds that there is no regulatory impact in the cost of S. 7.

CHANGES IN EXISTING LAW

S. 7 does not include any changes in existing law.

MINORITY VIEWS OF MESSRS. LEVIN, KENNEDY, BINGAMAN, GLENN, BYRD, ROBB, LIEBERMAN, AND CLELAND

We cannot support S. 7, the National Missile Defense Act of 1997, as it has been reported to the Senate by the Armed Services Committee. In our view, this legislation commits the United States to deploy a national missile defense system by 2003 before we know the cost of such a system; before we know whether the system would work effectively; and before we know whether deployment of such a system would jeopardize our current and future nuclear arms reductions, or what the nature of the threat will be at the time of deployment.

The Department of Defense shares our view that S. 7 represents an unwise approach to national missile defense. As outlined in this letter of April 23 to the Committee, the Defense Department's opposition to S. 7 is based on several considerations. By mandating now a national missile defense deployment in 2003, S. 7 would result in a very limited and possibly outdated capacity if and when deployment is warranted, or indeed, could lead to deployment of a system that is not operationally effective, and would in the meantime divert resources from more pressing modernization priorities for our military forces. In DOD's view, S. 7 also could jeopardize historic nuclear weapons reductions that enhance our security by threatening unilateral abrogation of the ABM Treaty.

The Defense Department letter states its case clearly:

The Department of Defense objects to this legislation because it would commit the United States to a deployment decision today of a national missile defense (NMD) system. We consider that a better use of defense dollars is our current plan—to develop a system over the next three years, and deploy it (or an improved variant) when and if a threat emerges. If we do otherwise, it will divert resources that our military needs for other priorities, and result in a less effective defense when and if a threat does emerge.

RESOURCE DIVERSION FROM HIGHER PRIORITIES

We agree with the Defense Department's view that the deployment commitment required by S. 7 would harm the modernization programs that our military believes are the highest priority: "Mandating an NMD deployment decision now would divert vital defense funds from other more pressing needs, including service modernization requirements that the Chairman and other members of the Joint Chiefs of Staff have highlighted as priorities to meet today's threats." Given the strong congressional consensus that modernization of our military forces is a top priority, diverting funds from modernization would be inconsistent with the need for continued modernization.

SYSTEM EFFECTIVENESS AND SCHEDULE RISK

We support continued development of a national missile defense system. By mandating in law today the deployment of a national missile defense system by 2003, however, we run the risk of procuring or deploying a system that would not work, and that might end up as an acquisition nightmare. We believe that when it comes to systems as important as missile defense, we have to follow the practice of "fly before we buy."

Gen. Howell Estes, Commander in Chief of North American Aerospace Defense Command (NORAD) who is responsible for defending the U.S. against ballistic missile attack, testified to the Committee on March 13, 1997: "From my perspective as CINCNORAD, it is vitally important that any ballistic missile defense system we ultimately deploy must be effective. * * * Finally, let me reemphasize that the Administration 3+3 program will enable us to deploy an NMD system in time to field a missile defense system before the threat places our citizens at risk."

Last year, Lieutenant General Malcolm O'Neill, then-Director of the Ballistic Missile Defense Organization responded to a question for the record about the need to deploy a system only when the technology proved ready:

Question. Would you advocate deploying a missile defense system to meet an arbitrary deadline if the technology is not mature or ready, and the system would not work well?

Answer. No. Clearly I would not advocate deploying a missile defense system to meet an arbitrary deadline if the technology was not mature resulting in a system with poor or no performance. The NMD Deployment Readiness Program is specifically tailored to prevent this approach. The deployment decision is keyed to the detection of a threat to the United States and not to an arbitrary deadline. * * * If the threat did not warrant deployment or if an acceptable level of performance is not achievable, additional development would be performed.

In the course of the Committee's hearings this year, senior defense civilian and military witnesses have made clear that the current "3+3" NMD Deployment Readiness program has a high risk schedule, and that additional time for development will provide additional capability when the threat emerges.

In his testimony before the Committee on February 12, Defense Secretary Cohen stated that the Department's ballistic missile defense (BMD) program "is proceeding as rapidly as is technologically sound."

In a March 28 report to the Committee on the establishment of the new NMD Joint Program Office, Under Secretary of Defense (Acquisition and Technology) Paul Kaminski commented that the "3 plus 3" program has an "extremely aggressive time constraint. * * * Most experts familiar with the program judged this schedule as extremely high risk."

General Shalikashvili, the Chairman of the Joint Chiefs of Staff, testified to the Committee earlier this year: "The NMD Deployment Readiness Program optimizes the potential for an effective Na-

tional Missile Defense system. If the decision is made to deploy an NMD system in the near-term, then the system fielded would provide a very limited capability. If deploying a system in the near-term can be avoided, DOD can continue to enhance the technology base and the commensurate capability of the NMD program system that could be fielded on a later deployment schedule. The objective here is to be in a position to be three years away from deployment, so America can respond to the emergence of a threat. This approach fields the most effective capability that is available at the time the threat emerges."

Lieutenant General Lester Lyles, Director of the Ballistic Missile Defense Organization (BMDO) which is responsible for managing all BMD programs, including national missile defense, testified before the Committee: "I would characterize the '3 plus 3' NMD as very high risk." * * * I want to reemphasize that I fully support the "3 plus 3" NMD strategy—it makes sense. The schedule, however, is very tough * * * He further stated that "While the '3 plus 3' program approach remains an absolutely valid strategy, recent events have highlighted the **fragility** of the program schedule," and acknowledged the "very high level of schedule risk associated with the NMD program."

THREAT ASSESSMENT

One of the key issues regarding any NMD deployment decision is an assessment of the threat to be countered by such an NMD system. If there is not a threat sufficient to warrant early deployment of an NMD system before its technology is fully developed, the U.S. can continue to develop the NMD technology so that the capability of the system continues to improve. This is the current DOD plan, which we believe makes sense.

On a general level, the issue of ballistic missile threat should be placed in a broader context of other threats to our security, and measured both in terms of likelihood and severity of the consequences. Only in that context can Congress make judgments about the allocation of limited resources to counter the most likely threats. For example, if the threat of terrorism, including the terrorist use of weapons of mass destruction, is more likely than a ballistic missile attack against the U.S., then logically we should devote greater resources to countering terrorism. This framework is missing from the current NMD debate.

There are currently two concerns related to ballistic missile attacks against the U.S. The first is from accidental or unauthorized launches of Russian or Chinese ballistic missiles. As the Committee has heard in testimony over the past few years, the intelligence community assesses such a threat to be "remote." Additionally, the U.S. and Russia have "detargeted" their long-range nuclear ballistic missiles, so that even if there were an accidental launch, the missile would not strike each other's territory.

Furthermore, General Eugene Habiger, Commander in Chief of the U.S. Strategic Command, testified before the Committee this year that, after carefully reviewing Russian nuclear force command and control procedures with his Russian counterparts, he is very confident in Russia's ability to prevent either accidental or unauthorized launches. In comparing U.S. and Russian command and

control of nuclear forces, Gen. Habiger stated "I have the same, if not a greater, comfort factor with the command and control procedures in place in Russia." He told the Committee that he finds it hard even to imagine a circumstance which could lead to an unauthorized launch.

The second concern relates to so-called "rogue" nations acquiring a long-range nuclear ballistic missile capability against the U.S. This would be very serious because some nations are believed to be willing to use such weapons, even in the face of prompt, certain and utterly devastating retaliation by the U.S. The intelligence community testified to the Committee this year that the only nation actually trying to develop such a capability is North Korea. However, the economic crisis in that state leads the Defense Intelligence Agency to conclude that North Korea is "probably terminal" as a nation, thus casting doubt on its ability to develop a missile capable of striking any part of the U.S. in the near term.

In its April 23 letter, the Department discussed its view of the relationship between threat and NMD deployment:

The Intelligence Community has concluded that a long-range ballistic missile threat to the United States from a rogue nation is unlikely to emerge within the next 14 years, but could be accelerated if those nations acquired this capability from beyond their borders. However, the Department is not complacent about this assessment. That is why the NMD program the Department is pursuing is designed to field as early as 2003—well ahead of the Intelligence Community estimates—a system able to deal with such threats. By mandating an NMD deployment decision now, the bill would force the Department to commit prematurely to a technological option that may be outdated when the threat emerges.

It is important that prior to any decision to deploy an NMD system, Congress and the administration assess whether there is a threat that warrants deployment of available technology. If not, it would be wiser to continue developing the capability for more effective defense technology for possible future deployment if and when a threat does emerge.

ARMS CONTROL CONCERNS

S. 7 suggests the strong possibility that the system to be deployed might violate or conflict with the ABM Treaty, but commits us to deployment regardless. The Department's letter on S. 7 states that "by mandating deployment and a one-year deadline in which to achieve negotiated changes to the ABM Treaty, S. 7 could be interpreted by the Russians as putting the United States on a path toward abrogating the ABM Treaty, thus putting at risk continued Russian implementation of the START I Treaty and Russian ratification of START I Treaty and Russian ratification of START II. These two treaties together will reduce the number of U.S. and Russian strategic nuclear warheads by two-thirds from Cold War levels, significantly lowering the threat to U.S. national security. It would be imprudent to jeopardize these reductions by making a de-

ployment decision today to deploy an NMD system when not warranted by the threat.”

It was very clear from the Helsinki summit meeting between Presidents Clinton and Yeltsin, where the U.S. and Russia agreed to a framework for further reductions in nuclear arsenals below the START II levels, that both the United States and Russia believe that continued adherence to the ABM Treaty is a cornerstone of strategic stability, and permits continued and further nuclear weapons reductions that serve our strongest national interests. The first paragraph of their Helsinki joint statement on the ABM Treaty reads as follows:

President Clinton and President Yeltsin, expressing their commitment to strengthening strategic stability and international security, emphasizing the importance of further reductions in strategic offensive arms, and recognizing the fundamental significance of the Anti-Ballistic Missile (ABM) Treaty for these objectives as well as the necessity for effective theater missile defense (TMD) systems, consider it their common task to preserve the ABM Treaty, prevent circumvention of it, and enhance its viability.

S. 7 acknowledges that it is important to maintain strategic stability. All of us would strongly agree with that goal. But S. 7 also contains provisions which would well undermine this very stability and jeopardize the continuing and planned reductions in U.S. and Russian nuclear weapons. As General Shalikashvili wrote in a letter to Senator Nunn last May: “The current National Missile Defense Deployment Readiness Program (NDRP), which is consistent with the ABM Treaty, will help provide stability in our strategic relationship with Russia as well as reducing future risks from rogue countries.”

S. 7 requires the Secretary of Defense to report on the point at which any activity required by the bill would conflict with the terms of the ABM Treaty. It urges the President to negotiate, “if necessary” an agreement to amend the ABM Treaty to “allow deployment” of the NMD system called for in the bill. Then, notwithstanding the “if necessary” caveat, S. 7 requires that, if there is no agreement with Russia within one year on amending the ABM Treaty, the President shall consult with Congress and consider withdrawing from the ABM Treaty.

S. 7 commits the U.S. now to deploy an NMD system in 2003 without first determining whether such a deployment would be in conflict with the ABM Treaty, and regardless of whether there is a conflict. This bill sends a signal that the U.S. is on a collision course with the ABM Treaty—hardly the signal we should send if we want to maintain the strategic stability advocated in S. 7 and continue reductions of Russian and U.S. nuclear weapons.

MINORITY AMENDMENTS

We offered two amendments in Committee that would address some of these concerns. The first amendment would have allowed for continued robust development of an NMD system but would have removed the requirement for a mandated deployment by the year 2003. It would also have required Congressional review, prior

to any decision to deploy, of the threat to be countered, the cost and operational effectiveness of the system, and the impact on nuclear weapons reductions. This is the same provision that was at the core of the bipartisan compromise that was negotiated by Senators Nunn, Levin, Warner and Cohen two years ago during the debate on the National Defense Authorization Act for Fiscal Year 1996. The Senate voted for that compromise by a large bipartisan margin of 85–13.

The second amendment would have required that the NMD system developed under this bill would be managed as a major defense acquisition program, and would have established a “fly before you buy” policy for the NMD system mandated by S. 7. We should be sure the system works before we deploy it, especially given the numerous comments by senior defense and military officials about the very high risk of the current NMD program schedule.

Unfortunately, both these amendments failed on votes of 10–8.

NO COST ESTIMATE

Finally, we are concerned there is no cost estimate accompanying S. 7. In an April 24 letter to the Committee, the Director of the Congressional Budget Office (CBO) explained that CBO cannot provide a cost estimate to S. 7 because the bill defines a limited ballistic missile attack by reference to a classified document issued by the United States Space Command: “The Congressional Budget Office cannot provide a cost estimate for S. 7, the National Missile Defense Act of 1997, as ordered reported by the Senate Armed Services Committee on April 24, 1997, because that estimate would have to be classified. * * * Preparing a classified estimate would be inconsistent with CBO’s procedures for the review and distribution of its products.”

This is an unacceptable situation. It is essential that the Senate have a clear understanding of the cost of the system required in S. 7 prior to considering this legislation. Last year, the cost of a proposed national missile defense system required by S. 1635, the “Defense America Act of 1996”, was estimated by the Congressional Budget Office to be as high as \$175 billion, including acquisition and operating costs over the life of the system. This very high cost was one reason the bill was not considered by Congress.

The cost of implementing S. 7 would surely be greater than the cost of the current funding plan for the Administration’s “3+3” National Missiles Defense Deployment Readiness Program. The Department makes clear in their April 23 letter that S. 7 would require diverting resources from other, higher priority modernization programs. But we do not know how much additional funding would be required for S. 7. Clearly, the Senate cannot adequately consider this bill without a thorough understanding of the cost to deploy the national missile defense system mandated by this legislation.

For all these reasons, we cannot support S. 7, and we recommend that the full Senate not support it either. As our senior defense and military leaders have clearly stated, the current “3 plus 3” program is a prudent course to address the problem of emerging ballistic missile threats to the U.S.

The issue of national missile defense has been very controversial in recent years. We anticipate that there will be a thorough and

vigorous debate when S. 7 is brought to the floor of the Senate. We stand ready to work towards the same kind of bipartisan compromise on this issue that received overwhelming endorsement in the Senate just two years ago.

CARL LEVIN.
JEFF BINGAMAN.
ROBERT C. BYRD.
J. LIEBERMAN.
TED KENNEDY.
JOHN GLENN.
CHUCK ROBB.
MAX CLELAND.

ADDITIONAL MINORITY VIEWS OF SEN. JOHN GLENN

I am concerned that this Committee, on the grounds of a badly divided, partisan vote, some dubious assumptions of technological sufficiency, and an erroneous claim about my own voting record on missile defense, is now endorsing a measure to force the President to deploy a National Missile Defense by the year 2003, willy nilly.

First, on a matter of such significance for the nation—both for its defense and its treasury—I would have hoped that there would have been a good faith attempt to reach a constructive compromise on language concerning the future NMD program. Instead, the measure was summarily dispatched in a series of straight party votes. If the amendments offered by my colleagues Senators Levin and Bingaman were in some measure objectionable, the option of at least entertaining some alternative wording might have been considered. The measured and prudent language of those amendments was peremptorily dismissed without even a brief attempt at reaching some compromise language, not to mention engaging in a reasonable debate.

Second, I have serious concerns that the Majority appears to be proceeding on the basis of the twin assumptions that all of the key technological challenges have been resolved in dealing with these various missile defense systems and that all that remains to be done is to iron out a few engineering and software problems. I strongly believe that the subcommittee is turning a blind eye to the high level of risk associated with the obligation to deploy NMD by 2003, a risk that arises in no small measure from persisting technological uncertainties. The Committee's approach effectively amounts to just throwing money at the problem, while imposing an unrealistic and controversial deadline that will only invite a presidential veto, a veto which I would regard as well justified.

Since the Committee's hearing, I reviewed some recent open testimony by key BMD program officials. Here is what they have testified:

"I think it is equally important that we recognize the *challenges we still face in developing and fielding ballistic missile defenses—in many cases this really is 'rocket science'.*"—Lt. Gen. Lester L. Lyles, Director, BMDO, testimony before House Appropriations Committee on FY 98 National Security Appropriations, 4/16/97.

"While the '3 plus 3' program approach remains an absolutely valid strategy, recent events have highlighted the *very high risk associated with the program schedule* * * * The most significant risk to the program is the recent failure of the EKV seeker flight test where BMDO and the Army attempted the first test of the GBI EKV sensor * * * The problem has been traced to a human procedural error and corrective procedures have been implemented * * * This simple human procedural error *clearly highlights the very high level of schedule risk associated with the NMBD program.*

* * * *It is also important to note that since we have not yet demonstrated EKV seeker performance, we still have high technical risk associated with the EKV seekers.*—Lt. Gen. Lester L. Lyles, Director, BMDO, testimony before House Appropriations Committee on FY 98 National Security Appropriations, 4/16/97.

“The Department has accelerated the schedule for an EMD phase of SBIRS-Low (SMTS), which results in a *first launch in Fiscal Year 2004.*”—Lt. Gen. Lester L. Lyles, Director, BMDO, testimony before House Appropriations Committee on FY 98 National Security Appropriations, 4/16/97.

“My twenty eight years of research, development and acquisition experience tells me that we have our challenges and *some aspects of the program are relatively high-risk*, but I am reminded that nothing worthwhile is ever easy.”—Lt. Gen. Lester L. Lyles, Director, BMDO, testimony before House Appropriations Committee on FY 98 National Security Appropriations, 4/16/97.

“Our inability to establish the management team, embark on our acquisition strategy by establishing a prime contractor, and most significantly the recent failure of the EKV seeker flight test together have *left us well ‘behind the power curve’* in executing the program.”—Lt. Gen. Lester L. Lyles, Director, BMDO, testimony before Senate Appropriations Committee, 3/12/97.

“These risk-reduction satellites will serve as a ‘bridge’ to a fully operational SBIRS-Low (SMTS) early in the next decade. The Department has accelerated the schedule for an EMD phase of SBIRS-Low (SMTS), which results in a *first launch in Fiscal Year 2004.*”—Lt. Gen. Lester L. Lyles, Director, BMDO, testimony before Senate Appropriations Committee, 3/12/97.

“THAAD is the most mature upper-tier system * * * Recent testing difficulties have led to the slip of this [THAAD UOES (User Operational Evaluation System)] capability from the fourth quarter of FY 1998 to the second quarter of FY 1999. We still have a *significant system engineering challenge*. The fact that recent THAAD flights have not met all their objectives, stretching out testing and delaying the start of EMD by over fifteen months, illustrates *the difficulty of this task*. If the seventh THAAD test, scheduled for early March, is not successful, it will be necessary to reevaluate the program’s schedule and content.”—Paul Kaminski, testimony before House National Security Committee, 3/6/97.

“*The Navy Theater Wide system is less mature* than the THAAD system. We restructured this program in 1996 and made it a pre-MDAP program and decided to proceed with concept definition and a technical demonstration. We have reevaluated this program and have added about \$220 million to it over the FY 1998 FYDP. This will lower the risk for the flight demonstration and accelerate the initial intercept test to first quarter fiscal year 2000 * * * This program responds to the need to proceed at the fastest prudent pace as the threat emerges, *the lack of maturity of the technology*, and the need to further develop the system concept to enhance robustness. There is also the opportunity to apply technology being developed for national missile defense to the NTW system. Likely areas of technology synergy include advanced sensors, guidance, and propulsion. Like other TBMD programs at this stage, *the program faces significant technology as well as engineering challenges.*

In particular, since the *LEAP kinetic kill vehicle is not yet mature*, we need to better understand alternatives before committing to full-scale development.”—Paul Kaminski, testimony before House National Security Committee, 3/6/97.

“It does not make sense to make a deployment decision in advance of the threat, because *we would be making investments prematurely*, resulting in a *system that would be less capable* when it is really needed. In the absence of a threat, it is more sensible to continue to enhance the capability of the system that could be deployed when it is needed. This approach fields the most cost effective capability that is available at the time the threat emerges.”—Paul Kaminski, testimony before House National Security Committee, 3/6/97.

“Air Force is funding development of the Space Based Infrared System (SBIRS) low earth orbit (SBIRS-Low) * * * have added \$509 million to the FY 1998 FYDP to accelerate the schedule for an EMD phase of the program, with a *first launch in FY04*. This will bring the initial operating capability (IOC) for a mixed high/low SBIRS program on-line two years earlier than previously planned, *in approximately FY06*. This plan is supported by both the Defense Science Board and the GAO, which found the FY04 initial launch date for the SBIRS-Low ‘technically prudent’”—Paul Kaminski, testimony before House National Security Committee, 3/6/97.

“With respect to the impact of the ABM Treaty on our national missile defense (NMD) program, DoD is considering various proposals for systems that would provide a limited defense of the entire United States against intercontinental range, or strategic, ballistic missiles. Systems to counter strategic ballistic missiles are considered ABM systems, and thus various provisions of the ABM Treaty would have to be considered. DoD will make formal ABM Treaty compliance assessments of the proposed systems as necessary *once their designs have matured* to a point where this is possible.”—Paul Kaminski, testimony before House National Security Committee, 3/6/97.

“As you all know, we are building highly sophisticated sensor and interceptor systems that utilize state-of-the-art technologies. *In most cases*, we are the program *pushing the envelope of those technologies*.”—Lt. Gen. Lester Lyles, Director of BMDO, testimony before Senate Armed Services Committee, 2/27/97.

“I would characterize the ‘3 plus 3’ NMD program as *very high risk* * * * *The schedule* * * * *is very tough* and I will rely on industry, the Services and my staff to identify and assess the program’s technical and schedule risks.”—Lt. Gen. Lester Lyles, Director BMDO, testimony before Senate Armed Services Committee, 2/27/97.

“We made a conscious decision to keep the UOES [User Operational Evaluation System] portion of the program on track, but we restructured the rest of the program for the objective THAAD system. During the review, we confirmed it was *not likely, due to the extent of system engineering risk* in the program, that we could achieve a *THAAD first unit* equipped until *fiscal year 2003 or 2002 at the very earliest* * * * The UOES+ program will militarize the UOPS design and upgrade certain components, such as the infra-

red seeker, the radar, and the BM/C3. Our current schedule for this program is to *begin LRIP* [Low-Rate Initial Production] *in fiscal year 2003, with a FUE* [First Unit Equipped] *in fiscal year 2006*. However, we are currently considering whether we might be able to afford some recovery of the FUE date, *perhaps to 2004*. We still have a *significant system engineering challenge*; the fact that recent THAAD flights did not meet all of their objectives, stretching out testing and delaying the start of EMD [engineering and manufacturing development] by four months, *illustrates the difficulty of this task*.”—Paul Kaminski, testimony before House National Security Committee, 9/27/96.

“The Navy Theater Wide system is *less mature* than the THAAD system. Prior to the review, we were proposing funding this program in our fiscal year 1996 and 1997 budgets at a low level (\$30 million per year) *to mature the key enabling technologies*. We have restructured this program to begin technology demonstration and *concept definition* this fiscal year, adding about \$570 million through the FYDP * * * This structured program responds to the need to proceed at a prudent pace as the threat emerges, the *lack of maturity and the technology*, and the need to further develop the system concept to enhance robustness * * * The program faces *significant technology as well as engineering challenges*. In particular, since the lead *kinetic kill vehicle is not yet mature*, we need to better understand kill vehicle alternatives *before committing* to full-scale development. A Lethality Improvement Program has been initiated to evolve the kill vehicle to a robust capability.”—Paul Kiminski, testimony before House National Security Committee, 9/27/96.

“If the decision is made to deploy an NMD system in the near term, then the system we could field in 2003 would provide a *very limited capability*. If we can avoid deploying a system in the near term, we will continue to *enhance the technology base* and the commensurate capability of the NMD system that could be fielded on a later deployment schedule.”—Paul Kiminski, testimony before House National Security Committee, 9/27/96.

If comments such as those above fail to resonate in the Committee or to be reflected in moderation of the relevant legislation, I can only wonder why we bother even having hearings at all on this subject.

At the risk of overdoing my quotes, I would like to commend to the Committee’s attention a passage from a recent report from the General Accounting Office identifying our government’s key “high-risk” programs. I think GAO’s concerns are quite germane to the deliberations of this Committee on missile defense issues:

“We noted [in 1992 and 1995] that one common characteristic of high-risk strategies is the *acquisition of weapons based on optimistic assumptions about the maturity and availability of enabling technologies*. * * * We also reported in 1992 and 1995 on the high-risk practice of *beginning production of a weapon system before development, testing, and evaluation are complete*. When a highly concurrent strategy is used, *critical decisions are made without adequate information* about a weapon’s demonstrated operational effectiveness, reliability, logistic supportability, and readiness for production. Also, *rushing into production* before critical tests have

been successfully completed has resulted in the purchase of systems that do not perform as intended * * * Nevertheless, DOD still begins production of many major and nonmajor weapons *without first ensuring that the systems will meet critical performance requirements.* * * * [for example] The Army plans to commit funds for producing 40 early prototype interceptors of the Theater High Altitude Area Defense System *well before testing provides assurance of the system's capabilities*, even though the program has already experienced significant cost, schedule, and technical performance problems.”—GAO, *High-Risk Series: Defense Weapon Systems Acquisition*, GAO/HR-97-6, February 1997, p. 21, 24.

My third concern arises from a claim made by a member of the Majority that I voted in favor of Committee proposal in 1991 to require the deployment of NMD by 1996. I presume my colleague was referring to the relevant NMD deployment language in the Senate bill (S. 1507) for the National Defense Authorization Act for Fiscal Years 1992 and 1993. My staff reviewed the Committee's roll call vote for that specific measure and found that I voted (along with Senators Gore, Levin, and Kennedy) in opposition to that 1996 deployment proposal. The vote was 16-4 in favor.

It is also noteworthy that the enacted law (PL 102-190) did not contain any unconditional obligation to deploy an NMD by 1996. The law required that “The Secretary of Defense shall *develop for deployment by the earliest date allowed by the availability of appropriate technology* or by fiscal year 1996 a *cost-effective, operationally-effective*, and *ABM Treaty-compliant* anti-ballistic missile system at a single site as the initial step toward deployment of an anti-ballistic missile system * * * designed to protect the United States against limited ballistic missile threats, including accidental or unauthorized launches or Third World attacks.” The law clearly called for development, but tied actual deployment of NMD both to the availability of the technology and to the satisfaction of several other additional conditions.

Furthermore, sec. 240 had another interesting provision: “Nothing in this part may be construed to imply—(1) congressional authorization for development, testing, deployment of anti-ballistic missile systems in violation of the ABM Treaty, including any protocol or amendment to the treaty; or (2) final congressional authorization for deployment of anti-ballistic missile systems in compliance with the ABM Treaty.”

I am less concerned about the error made in placing me in favor of a mandatory deployment date than I am about the omission of all of this other language from the current bill—specifically the language about complying with (as opposed to explicit threats of withdrawing from) the ABM Treaty, and the caveats about the “availability of appropriate technology”, cost effectiveness, and operational effectiveness. Perhaps if these specific legislative provisions had been incorporated into the current bill, S. 7 might well have obtained some greater support among the minority. Indeed, if this language had been inserted into S. 7 in place of the mandatory de-

ployment date, there would have been no need for the Levin or Bingaman amendments.

